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EXAMINER

REDMAN, JERRY E

ART UNIT

PAPER NUMBER

3634

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/806,573

Applicant(s)

THOMPSON ET AL.

Examiner

Jerry Redman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 147-294 is/are pending in the application.
- 4a) Of the above claim(s) 175, 176, 247 and 248 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 147-174, 177-246 and 249-294 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Applicant's election with traverse of Group I in Paper No. 7 is acknowledged. The traversal is on the ground(s) that claims 147-174 are generic and that one embodiment works better than the other one. This is not found persuasive because even though there are generic claims, this does not constitute the fact that the applicant has disclosed separate inventions. Furthermore, the applicant has admitted that more than one invention is disclosed and claimed and the applicant's arguments actually supports the fact that more than one invention is disclosed and claimed and therefore the need for a restriction is proper and necessary.

The requirement is still deemed proper and is therefore made FINAL.

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "selection of each elongated member" recited in claim 191; a third line connecting said second end of the elongate member to a second drive means which operates the third line as recited in claim 199; the hollow tube being split as recited in claims 211 and 213; clamping each end of the hollow tube as recited in claim 212; a plurality of padlocks disposed in each of the support means as recited in claim 217; the limitations claim 271 are not shown in their entirety, specifically, the third line being drawn in towards a third aperture of the second support means (the drive is on the other support means and not the second as

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discussed in detail below); the hollow tube being split as recited in claims 283; clamping each end of the hollow tube as recited in claim 284; a plurality of padlocks disposed in each of the support means as recited in claim 289; must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 147-174, 177-246, and 249-294 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 147, line 3, there is a lack of antecedent basis for "the other side". In claim 148, line 2, the phraseology "or" is not readily understood. The proper form is "one of a, b, c,.. and d". In claim 151, line 2, it appears that "or" should be --and--. In claim 153, lines 1 and 2, the phraseology "or" is indefinite and fails to properly claim the invention. In claim 158, line 2, the phraseology "or" is not readily understood. The proper form is "one of a, b, c,.. and d". In claim 160, line 1, there is a lack of antecedent basis for "the first line". In claim 172, line 1 and lines 2-3 there is a lack of antecedent basis for "said pulley means" and "said first and second spring" respectively. In claim 180, line 2, there is a lack of antecedent basis for "the unlock direction". In claim 191, line 1, the phraseology "or a selection of each" is not readily understood by the Examiner. In claim 192, line 2, consistency is not maintained between the first and second support means. Throughout

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the claims the applicant's state that a drive is from one support means and that an elongate member is connected to this support means (can't be because the drive is opposite of the support member which has the elongate member). Furthermore, the applicant states in some of the claims that the drive is on the same support means as the counterbalance element (this can't be true because not only due the drawings fail to show this, the specification specifically states that on one support the counterbalance is housed and on a different support is the drive assembly). In claim 193, lines 1 and 3, the phraseology "and/or" is indefinite and fails to positively recite the claimed invention. In claim 198, line 2, the phraseology "and/or" is indefinite and fails to positively recite the claimed invention. In claim 201, lines 1-2, the phraseology "first and second support means are constructed the same" is not readily understood by the Examiner. How can they be constructed the same when the house different elements, have different elements attached to an outside, and have different functions (with holes and mounts) based on the elements and operation of the gate assembly? In claim 208, line 1, the phraseology "said external power source is mains power" is not readily understood by the Examiner. In claim 210, line 1, there is a lack of antecedent basis for "said third line". In claim 220, line 3, there is a lack of antecedent basis for "the other side". In claim 222, line 1, the phraseology "and/or" is indefinite and fails to positively recite the claimed invention. In claim 223, line 2, the phraseology "or" is not readily understood. The proper form is "one of a, b, c,.. and d". In claim 244, lines 1 and 2-3, there is a lack of antecedent basis for "said pulley means" and "said first and second springs" respectively. In claim 252, line 2, there is a lack of antecedent basis for "the unlock

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direction". In claim 263, line 1, the phraseology "or a selection of each" is not readily understood by the Examiner. In claim 264, line 2, consistency is not maintained between the first and second support means. Throughout the claims the applicant's state that a drive is from one support means and that an elongate member is connected to this support means (can't be because the drive is opposite of the support member which has the elongate member). Furthermore, the applicant states in some of the claims that the drive is on the same support means as the counterbalance element (this can't be true because not only due the drawings fail to show this, the specification specifically states that on one support the counterbalance is housed and on a different support is the drive assembly). In claim 265, lines 1 and 3, the phraseology "and/or" is indefinite and fails to positively recite the claimed invention. In claim 270, line 2, the phraseology "and/or" is indefinite and fails to positively recite the claimed invention. . In claim 273, lines 1-2, the phraseology "first and second support means are constructed the same" is not readily understood by the Examiner. In claims 276 and 278, lines 1 and 2 respectively, the phraseology "and/or" is indefinite and fails to positively recite the claimed invention. In claim 282, lines 1-2, there is a lack of antecedent basis for "said third line". In claim 284, line 2, the phraseology "of" is in italics for what reason? In claim 291, line 3, there is a lack of antecedent basis for "the other side". In claim 292, line 3, there is a lack of antecedent basis for "the other side". In claim 292, line 5, the phraseology "and/or" is indefinite and fails to positively recite the claimed invention. In claim 293, line 3, there is a lack of antecedent basis for "the other side". In claim 293, line 5, the phraseology "and/or" is indefinite and fails to positively recite the claimed

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invention. In claim 293, line 25, the phraseology "derive" is not readily understood by the Examiner. In claim 294, line 3, there is a lack of antecedent basis for "the other side". In claim 280, line 1, the phraseology "said external power source is mains power" is not readily understood by the Examiner.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 147-153, 156, 166, 167, 180-185, 187-193, 199-201, 206-208, 211, 213-215, 218-226, 229, 232, 238, 239, 252-257, 259-265, 271-273, 278-280, 283, 285-287, and 290 are further rejected under 35 U.S.C. 102(b) as being anticipated by Swenson et al. Swenson et al. disclose a gate comprising a first support (11), a second support (12), a cable (17) extending therebetween, , a drive and pulley winch mechanism having a line (the portion within the support) connected to the cable (17) which drives the cable to a blocking and unblocking position, a bar (13) pivotally connected on each side of the support, and a solar or electrically power system,

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 154, 155, 202, 203, 216, 227, 228, 237, 274, 275, and 288 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Swenson et al. All of the elements of the instant invention are discussed in detail above except providing the following: 1) the line and cable to be 1.6mm and 10mm respectively, 2) the elongate member to be 550mm or 750mm above the ground, and 3) a locking means to be a padlock. With respect to claims 154, 155, 227, 228, and 237, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the line and cable of Swenson et al. to be 1.6mm and 10mm respectively since it is a matter of design choice to provide the proper diameter of line depending on the span in which the gate is to extend and one of ordinary skill in the art would provide the line and cable to have the proper engineering strength to perform at the proper level. With respect to claims 202, 203, 274, and 275, it would have been further obvious to one of ordinary skill in the art at the time of the invention to provide the elongate member of Swenson et al. to be positioned above the ground at 550mm or 750mm since it would have been a matter of design choice to provide the proper height such that most vehicles would engage the cable as it extends across the supports even due to sagging and the gate of Swenson et al. would operate equally as well with the cable at a height of 550mm or 750mm.

11/3/03  
Claims ~~191-194~~ would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 157-165, 168-174, 177-179, 186, 194-198, 204, 205, 209, 210, 212, 217, 230, 231, 233-236, 240-246, 249-251, 258, 266-270, 276, 277, 281, 282, 284, and 289




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would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patents to Baker, Gompertz et al. ('190, '503 and '627), Bardwell et al., Bardwell, and Dickenson disclose elements similar to that of the applicant's invention.

The applicant is put on notice that ALL of the Examiner's rejections should be address individually and in detail and each and every claim must be argued individually and separate to avoid a non-responsive.

Any inquiry concerning this communication should be directed to Jerry Redman at telephone number 703-308-2120.



**Jerry Redman**  
**Primary Examiner**